IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITOIN NO.2353 OF 1999

M/s.Vitara Chemicals Ltd.
and Ors. ...Petitioners

Vs.

M/s.Satguru Traders
& Anr. ...Respondents

....
Mr.Prakash Naik Adv. for Petitioners
Respondent No.1 served
Mr.M.M.Deshmukh A.P.P. for State-Respondnet No.2
....

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 31,2006

P.C.

1. Heard the learned advocate for the petitioners and the learned A.P.P. for the State.

2. The petitioners are facing prosecution in Criminal Case No.654-S/99 pending before the Metropolitan Magistrate, 9th Court, Bandra, Mumbai. The said case is under Section 138 of Negotiable Instruments Act.

3. As far as petitioner no.2 is concerned, his case is quite different from the other petitioners. It is his case that he has resigned prior to the cheques being issued. Hence, it is his case that he had resigned much before the cause of action arose. It is further stated that petitioner no.2 was also facing prosecution in a similar case and prosecution against him in the said case came to be quashed by this Court.

4. Essentially as petitioner No.2 is seeking quashing of process under Section 138 of Negotiable Instruments Act, in view of the decision of this Court in the case of **V.K.Jain and others Vs. Pratap P.Padode reported in 2005(3) Mh.L.J.778,** it would be appropriate that the petitioner No.2 prefers revision against the order of the Magistrate issuing process against him before the concerned Sessions Court. Liberty is granted to the petitioner No.2 to prefer revision before the concerned Sessions Court. The said revision application to be filed within four weeks from today. Interim stay granted by this Court to continue for a period of four weeks from today.

The learned Sessions Judge after hearing necessary parties to dispose of Revision Application on merits. The learned Sessions Judge to condone the delay if any, caused in filing the Revision Application.

5. As far as other petitioners are concerned, it is their case that as winding up petitions have been preferred in respect of the company, the petitioners could not make any payment and any such payment made by them would amount to disposition of the property of the company within the meaning of Section 526 (2) of the Companies Act and hence, would be void. One of the directors of **Orkay Industries,** has filed petition before this Court raising the very same contentions, as has been raised by the petitioners Nos.1, 3 and 4. In this case, the Division Bench of this Court held as follows:

. "We see no conflict between section 138 of the Negotiable Instruments Act and section 536(2) read with Section

441(2) of the Companies Act. As stated above, the two operate in separate fields. In any case, as stated above, the offence is complete on the 15th day after receipt of the notice by virtue of non-payment and if during that period there was no voidness then a subsequent order of winding up has no effect on the offence which has already been committed".

. The above judgment has been challenged in appeal before the Supreme Court by one of the Directors of Orkay Industries Ltd. Mr.Pankaj Mehra by filing a SLP.

. In the said S.L.P. the said questions raised and the questions raised in the present matter, are the same. The said S.L.P. has been disposed of and the decision is reported in **Pankaj Mehra Vs. State of Maharashtra reported in A.I.R. SCW 2000**

page 991:AIR 2000 SC 1953. In the said decision, the view taken by this Court has been upheld. In this view of the matter, as far as petitioner nos. 1, 3 and 4, no case is made out to entertain the present petition. Hence, writ petitions are disposed of. As far as petitioner nos.1, 3 and 4 interim stay granted earlier stands vacated.

6. Writ Petition disposed of.

[SMT.V.K.TAHILRAMANI,J.]